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Filed : May 2, 2001

REMARKS

Claims 1-20, 22-24, 26-37, 39, 49-53, and 56-67 were before the Examiner. In this paper, Claims 1-8, 14-20, 26, 27, 30, 31, 36, 50, 57 and 63 have been amended. No claims have been canceled. New Claims 68-69 has been added herein. Accordingly, Claims 1-20, 22-24, 26-37, 39, 49-53, and 56-69 are now before the Examiner for consideration. No new matter has been added with this amendment.

Rejection of Previously Allowed Claims

As an initial matter, Applicant notes that the present reissue application has been pending approximately 7 years. In that time, the application had been prosecuted to the point where prosecution on the merits was closed and all the claims indicated to be allowable. For example, in Office Actions dated May 19, 2003, December 31, 2003, and April 6, 2004, substantially all of the then-pending claims were indicated to be allowed, and these Office Actions related solely to formalities. However, since this application was subsequently docketed to a new Examiner, it has appeared to Applicant as if prosecution has begun anew, culminating in the present Office Action of greater than 20 pages.

Applicant respectfully notes that the MPEP, Commissioner of Patents, and federal courts have all taken a dim view of such a recommencing of prosecution by a second Examiner. For example, the MPEP states: "Full faith and credit should be given to the search and action of a previous Examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an Examiner should not take an entirely new approach or attempt to reorient the point of view of a previous Examiner, or make a new search in the mere hope of finding something." M.P.E.P §706.04. The MPEP further states that "it is unusual to reject a previously allowed claim," and urges "great care" be exercised in making such a rejection. M.P.E.P §706.04.

In this instance, the Examiner has relied primarily on Dickson and Buday in the substantive rejections of the claims. Applicant notes that Dickson and Buday were cited by the previous Examiner in the first substantive Office Action mailed in this application, dated November 27, 2001. These references were not considered to be the most relevant references at

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that time. Thus, in this instance, the Examiner has not cited newly-discovered art, nor has the Examiner asserted there has been a clear error in the actions of the previous Examiner.

Accordingly, Applicant respectfully requests that the Examiner reconsider the substantive treatment of previously allowed claims and accord "full faith and credit" to the actions of the previous Examiner. Applicant thus requests that the Examiner withdraw all substantive rejections for at least the reasons that the previous Examiner found the claims to distinguish over the Dickson and Buday references. In the alternative, should the Examiner conclude that "clear error" was present in the actions of the previous Examiner, Applicant respectfully submits a response to the Office Action on the pages that follow.

Regarding the Examiner's Comments on the Drawings:

The Examiner objected to Figure 4, indicating it should be designated by legend such as "Prior Art" and requesting correction thereof. Applicant has amended Figure 4 to include a legend indicating "Prior Art."

The Examiner further objected to the drawings, indicating an apparent inconsistency in the position of the lead line for element 16 in Figures 1, 3, and 5. Applicant has amended Figures 3 and 5 to refer to the shelf at 16'.

The Examiner further objected to the drawings, indicating they include superfluous lettering in Figures 4 and 5. Figures 4 and 5 include schematic representations of various features disclosed in the present application. Accordingly, certain features may be disclosed with a labeled representation. See, e.g., 37 CFR §1.83(a).

The Examiner further objected to the drawing, indicating Figure 1 does not show the lip 34 and improperly shows the lip 32. Applicant has amended Figure 1 to clarify the shape of the lip 32 and to further define the shape of the lip 34 in accordance with the specification.

The Examiner further objected to the drawings, asserting that several claimed features are not shown therein. Applicant respectfully disagrees with this assessment by the Examiner. Regarding item 1) identified by the Examiner, the illustration of the cooler, visi-cooler, walk-in cooler and glass door cooler, Applicant notes that "conventional features" disclosed in the description and claims need not be illustrated in detail. See, e.g., 37 CFR §1.83(a). Furthermore, Applicant notes that Figures 3-5 schematically illustrate a cooler shelf "s" thus implying the

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presence of some type of cooler. Accordingly, Applicant submits that no amendments are necessary and requests that the Examiner withdraw this objection.

Regarding item 2) identified by the Examiner, that of relative sizings of support legs, Applicant notes that Figure 6 has been added to further illustrate the recited features, which are described in the specification. (See, e.g., U.S. Patent No. 6,044,983, col. 3, lines 2-6).

Regarding item 3) identified by the Examiner, Applicant notes that a clearance is identified in Figure 5 and a range of diameters for the clearance is disclosed in the specification at column 5, lines 1-8. Accordingly, Applicant submits the recited feature is disclosed by the drawings.

Regarding the Examiner's Comments on the Specification

The Examiner objected to the amendments filed March 1, 2004 and March 5, 2007 as introducing new matter into the disclosure. For at least the reasons discussed below, Applicant disagrees with these objections and requests that the Examiner reconsider and withdraw these objections.

Support for the amendment filed March 1, 2004 can be found at least at column 2, lines 56-62 of US Patent Number 6,044,983 as issued. Further reference to an embodiment having a shelf 16 under the cooler shelf is made throughout the specification, such as at column 3, lines 36-41, and column 4, lines 23-26.

In the amendment filed March 5, 2007, as the Examiner noted, certain claim recitations were recited in Claims 20, 30, 33, 36, and 58 which relate to spacing or clearance between elements thereof. Other recitations made in Claims 20, 30, 36, and 63 relate to the relative lengths of support legs. As the Examiner noted, the specification provides support for allowing the insertion of cans at the rear of the rack, and for support legs having different lengths. Furthermore, the specification indicates that various features disclosed with respect to an embodiment of storage system where the rack sits atop the shelf are desirable in other embodiments a storage system such as where the rack hangs from the shelf. (See Col. 4, lines 23-29). As noted in column 4, lines 26-29, "various rods and bars described in shown for the [Figure 1] preferred embodiment are considered desirable...." Accordingly, for at least the

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reasons discussed above, the Applicant submits that no new matter was added in the amendment filed March 5, 2007.

The Examiner further objected to the specification as failing to provide proper antecedent basis for the claimed subject matter. Specifically, the Examiner asserted that the panel including at least one substantially vertical surface as recited in Claim 23 lacked antecedent basis in the specification. Applicant notes that antecedent basis for the recitations of Claim 23 are provided in at least column 4, lines 14-15. Accordingly, Applicant requests that the Examiner's objection to the specification regarding Claim 23 be withdrawn.

The Examiner objected to the abstract of the disclosure, noting that "is provided" on line 2 should be deleted. The Examiner additionally objected to the abstract, asserting that it did not set forth the resting on the shelf and hanging from the shelf embodiments. In the above section entitled Amendments to the Specification, Applicant has provided a replacement abstract addressing these concerns. Accordingly, Applicant respectfully submits that the Examiner's objections related to the Abstract are now moot and should be withdrawn.

Regarding the Examiner's Claim Objections:

The Examiner objected to Claim 26 because it depends from canceled Claim 25. Applicant has amended Claim 26 to depend from Claim 20.

The Examiner objected to Claim 31, asserting that it failed to further limit the structure of the shelving system. Applicant has amended Claim 31 to recite a shelf "configured to be" mounted in a display case.

The Examiner objected to Claim 57, asserting that certain recitations implied the combination of the shelf and beverage containers. Applicant has amended Claim 57 to clarify any confusion noted by the Examiner by reciting upper ends "adapted to be" disposed above the plurality of cylindrical beverage containers.

Accordingly, for at least the reasons noted above, Applicant submits the claim objections are moot and should be withdrawn.

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Regarding the Claim Objections under 35 U.S.C. §112

The Examiner rejected Claims 1-20, 22-24, 26-37, 39, 49-53, and 56-57 under 35 U.S.C. §112. Applicant has amended the claims to delete the recitation of "like" throughout the claims.

Regarding specific rejections of Claim 1, Applicant submits that the use of recitations such as "thereon" on line 13 of Claim 1 is sufficiently clear. Claim 1 recites "at least a portion of the framework (22b) extends at least forward of a projection of the front rod member (10a) thereon." Thus "thereon" refers to the projection of the front rod member 10a onto the framework 22b. Applicant also submits that recitations such as "in a direction from the second plane with at least a component toward the first plane," as recited in Claim 1 define a direction in which "the stop (34)," extends, and Applicant has amended Claim 1 to further clarify this direction.

Regarding specific rejections to Claim 5, Applicant has amended "one end" and "an opposite end" to read "first end" and "second end" and to further clarify the features recited therein.

Regarding specific rejections to Claim 14, applicant has amended Claim 14 to further clarify the claim.

Regarding specific rejections to Claim 20, applicant has amended Claim 20 to recite "the" beverage containers at line 10. Applicant submits that recitations such as "shelf" on line 17 of Claim 20 do not render the claim indefinite, but rather define a size relationship given a "horizontal shelf" while the shelf previously recited in the claim (for example, on line 8) may or may not be horizontal.

Regarding specific rejections to Claim 27, although Applicant submits that the recitation of "articles" does not render the claim indefinite, for further clarification, Applicant has amended Claim 27 to recite "beverage containers" rather than "articles."

Regarding specific rejections to Claim 30, applicant has deleted one instance of the redundant use of the phrase "of the."

Regarding specific rejections to Claim 36, applicant has amended the claimed to recite a "means for spacing" to clarify the function being performed. Applicant has changed the first recitation of "the" to "a" in line 13, as suggested by the Examiner.

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Regarding specific rejections to Claim 63, applicant has amended the claim to clarify references to "the portion" on line 10.

Accordingly, for at least the reasons noted above, applicant submits that all of the rejections under 35 U.S.C. § 112 have been addressed and should now be withdrawn.

Regarding the Claim Rejections Under 35 U.S.C. §102

The Examiner rejected Claims 5, 18, and 56 under 35 U.S.C. §102(b) as being anticipated by Dickson. The Examiner further rejected Claim 14 as being anticipated by Dickson. For the reasons discussed below, Applicant traverses these rejections.

Claim 5 recites, among other recitations, "at least one support (22a) connecting at least the front rod like number (10a) and the framework (22b)." Dickson does not disclose such a support. Instead, in the Dickson device, transversely extending wires 21 are fixed directly to uppermost wires 13 of a container with no supports therebetween. (Column 2, lines 21-23; Figure 2). Accordingly, for at least the reasons discussed above, Claim 5 is patentably distinct from Dickson. Claim 18 depends from Claim 5 and recites additional recitations thereon. Accordingly, Claim 18 is likewise patentably distinct from Dickson for at least the reasons discussed above with respect to Claim 5.

Claim 14 recites, among other recitations, "at least one support (22a) connecting at least the front rod member (10a) and the framework (22b)." As noted above with respect to Claim 5, Dickson fails to disclose such a support. Accordingly, Claim 14 is patentably distinct from Dickson.

Claim 56 recites, among other recitations, "at least one support connecting at least the front member and the framework." As noted above with respect to Claim 5, Dickson fails to disclose such a support. Accordingly, Claim 56 is patentably distinct from Dickson.

Regarding the Claim Rejections under 35 U.S.C. §103

The Examiner rejected Claims 1-4, 15-17, 53, and 62 under 35 U.S.C. §103(a) as being unpatentable over the prior art of the preamble of Claim 1 in view of Buday (U.S. Patent No. 5,240,124). Applicant respectfully traverses the present rejection.

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Claim 1 recites, among other recitations, a shelf structure comprising "at least one support (22a) connecting at least the front rod member (10a) and the framework (22b)." Buday fails to disclose such a support.

Instead, Buday discloses a storage rack having a cross member 42 directly attached to a top guide 28 of the rack. (Column 2, lines 49-50). In the Buday device, vertical support members 32, 34, 36, 38 define a height of the rack, but are not connected to the cross member 42. (Column 2, lines 39-42; Figure 1).

Accordingly, for at least the reasons disclosed above, the combination suggested by the Examiner, including Buday, fails to disclose the subject matter recited in Claim 1. Claims 2-4, 15-17, and 62 depend from Claim 1 and recite additional recitations thereon. Therefore, Claims 2-4, 15-17, and 62 are distinguishable over the cited art for release the reasons discussed above with respect to Claim 1.

Claim 53 recites, among other recitations, "at least one support connecting at least the front member and the framework." As noted above with respect to Claim 1, Buday fails to disclose such a support. The preamble of Claim 1 likewise fails to disclose such a support. Thus, the combination of references asserted by the Examiner fails to disclose the recited subject matter. Accordingly, for at least these reasons, Claim 53 is distinguishable over the cited art.

The Examiner rejected Claims 9-12 and 19 under 35 USC §103(a) as being unpatentable over Claim 1 in view of Buday and further in view of Lockwood (US Patent No. 4,732,282). As noted above with respect to Claim 1, Buday fails to disclose all of the recitations therein. Lockwood likewise fails to disclose the support recited in Claim 1 (Lockwood, Figure 1). Accordingly, Claims 9-12 and 19, all of which depend from Claim 1, are distinguishable from the combination of references asserted by the Examiner.

The Examiner rejected Claim 13 under 35 U.S.C. §103(a) as being unpatentable over Dickson further in view of Lockwood. As noted above with respect to Claim 5, Dickson fails to disclose all of recitations therein. Lockwood likewise fails to disclose the support recited in Claim 5. Accordingly, Claim 13, which depends from Claim 5, is distinguishable from the combination of references asserted by the Examiner.

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The Examiner rejected Claim 6 under 35 U.S.C. §103(a) as being unpatentable over the preamble of Claim 6 in view of Dickson. Claim 6 recites, among other recitations, "at least one support (22a) connecting at least the front rod member (10a) and the framework (22b)." As discussed above with respect to Claim 5, Dickson fails to disclose a device including a support as recited. Accordingly, Claim 6 is distinguishable over the cited art.

The Examiner rejected Claim 7 under 35 U.S.C. §103(a) as being unpatentable over the preamble of Claim 7 in view of Dickson. Claim 7 recites, among other recitations, "at least one support (22a) connecting at least the front rod member (10a) and the framework (22b)." As discussed above with respect to Claim 5, Dickson fails to disclose a device including a support as recited. Accordingly, Claim 7 is distinguishable over the cited art.

The Examiner rejected Claim 8 under 35 U.S.C. §103(a) as being unpatentable over the preamble of Claim 8 in view of Dickson. Claim 8 recites, among other recitations, "at least one support (22a) connecting at least the front rod member (10a) and the framework (22b)." As discussed above with respect to Claim 5, Dickson fails to disclose a device including a support as recited. Accordingly, Claim 8 is distinguishable over the cited art.

The Examiner rejected Claims 20, 22-24, 26, 28, 29, 30, 32, 35, 36, 39, 49-52, and 63-67 under 35 U.S.C. §103(a) as being unpatentable over Dickson in view of Lockwood. As discussed above with respect to Claim 5, Dickson fails to disclose a support. Claim 20 recites, among other recitations, "a first pair of support legs," and "a second pair of support legs, " "wherein the first and second pairs of support legs are sized such that the forward portion hangs lower than the rearward portion when the rack is hanging." For at least the reasons noted above that Dickson fails to disclose a support, it also likewise fails to disclose first and second pairs of support legs, and the particular sizings of support legs recited in Claim 20. Accordingly, Claim 20 is distinguishable over the cited art. Claims 22-24, 26, 28, and 29 depend from Claim 20 and recite additional recitations thereon. Accordingly, Claims 22-24, 26, 28, and 29 are distinguishable over the cited art for at least the reasons discussed herein above with respect to Claim 20.

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Claim 30 recites, among other recitations, a shelving system comprising "a first pair of support legs," "a second pair of support legs," and relative sizing of the pairs of support legs "such that the support assembly is inclined relative to the shelf when the rack is hanging from the shelf." Accordingly, for at least the reasons discussed above with respect to Claim 20, Claim 30 is distinguishable over the cited art. Claims 32 and 35 depend from Claim 30 and recite additional recitations thereon. Accordingly, Claims 32 and 35 are distinguishable over the cited art for at least the reasons discussed with respect to Claim 30.

Claim 36 recites, among other recitations, a shelving system comprising "a first pair of support legs," and "a second pair of support legs." Accordingly, for at least some of the reasons discussed above with respect to Claim 20, Claim 36 is distinguishable over the cited art. Claim 39 depends from Claim 36 and recites additional recitations thereon. Accordingly, Claim 39 is distinguishable over the cited art for at least the reasons discussed with respect to Claim 36.

Claim 49 recites, among other recitations, a shelving system comprising "a first plurality of support legs," and "a second plurality of support legs." Accordingly, for at least some of the reasons discussed above with respect to Claim 20, Claim 49 is distinguishable over the cited art. Claims 50-52 depend from Claim 49 and recite additional recitations thereon. Accordingly, Claims 50-52 are distinguishable over the cited art for at least the reasons discussed with respect to Claim 49.

Claim 63 recites, among other recitations, a rack comprising "a first pair of support legs," and "a second pair of support legs." Accordingly, for at least some of the reasons discussed above with respect to Claim 20, Claimed 63 is distinguishable over the cited art. Claims 64-67 depend from Claimed 63 and recite additional recitations thereon. Accordingly, Claims 64-67 are distinguishable over the cited art for at least the reasons discussed with respect to Claimed 63.

The Examiner rejected Claims 27, 33, 34, and 37 under 35 U.S.C. §103(a) as being unpatentable over Dickson in view of Lockwood. Claim 27 depends from Claim 20 and recites additional novel and nonobvious recitations thereon. Accordingly, for at least the reasons discussed above with respect to Claim 20, Claim 27 is distinguishable over the cited art.

Claim 33 depends from Claim 30 and recites additional novel and nonobvious recitations thereon. Accordingly, for at least the reasons discussed above with respect to Claim 30, Claim

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33 is distinguishable over the cited art. Claim 34 depends from Claim 33 and recites additional novel and nonobvious recitations thereon. Accordingly, for at least the reasons discussed above with respect to Claim 33, Claim 34 is distinguishable over the cited art.

Claim 37 depends from Claim 36 and recites additional novel and nonobvious recitations thereon. Accordingly, for at least the reasons discussed above with respect to Claim 36, Claim 37 is distinguishable over the cited art.

The Examiner rejected Claim 31 under 35 U.S.C. §103(a) as being unpatentable over Dickson in view of Lockwood further in view of Richardson et al. Claim 31 depends from Claim 30 and recites additional novel and nonobvious recitations thereon. As discussed above, the combination of Dickson and Lockwood suggested by the Examiner fails to disclose "a first pair of support legs," "a second pair of support legs" and relative sizing of the pairs of support legs "such that the support assembly is inclined relative to the shelf when the rack is hanging from the shelf," as is recited in Claim 30. The Richardson reference relates to a product advance mechanism and likewise fails to disclose the shelving system recited in Claim 30. Rather, Richardson discloses a product advance mechanism having a single, non-inclined shelf and no support legs. (See, e.g., Richardson, Figure 3). Accordingly, the combination of references asserted by the Examiner fails to disclose all of the features recited in Claim 30, from which Claim 31 depends. Claim 31 is therefore distinguishable from the cited art for at least the reasons discussed with respect to Claim 30.

The Examiner rejected Claims 57-59 under 35 USC §103(a) as being unpatentable over Dickson in view of Lockwood. Claim 57 recites, among other recitations, and shelf comprising "first and second support portions disposed at the forward portion of the support assembly," "at least first and second apertures disposed adjacent the upper ends of the first and second support portions... configured to receive fasteners for supporting the forward portion of the support assembly from a shelf above the support assembly," "third and fourth support portions disposed at the rearward portion of the support assembly," and "third and fourth apertures disposed adjacent the upper ends of the third and fourth support portions... configured to receive fasteners for supporting the rearward portion of the support assembly." As noted above with respect to

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Claim 20, Dickson fails to disclose support portions. While Dickson does disclose thumbscrews 27, 30, the thumbscrews do not "support" the display device of Dickson. Rather, brackets 22 formed in a C-shape are used to support the Dickson device from a shelf. (Column 2, lines 20-32). The thumbscrews are used to position the device relative to the brackets 22 and the shelf. Lockwood likewise fails to disclose fasteners for supporting the dispenser disclosed therein. Accordingly, for at least the reasons discussed above, Claim 57 is distinguishable over the cited art. Claims 58-59 depends from Claim 57 and recite additional novel and nonobvious recitations thereon. Accordingly, Claims 58-59 are distinguishable over the cited art for at least the reasons discussed above with respect to Claim 57.

The Examiner rejected Claims 60 and 61 under 35 USC §103(a) as being unpatentable over Dickson in view of Lockwood further in view of Wagner. Claims 60 and 61 depend from Claim 58 and recite additional recitations thereon. Accordingly, for at least the reasons discussed above with respect to Claim 58, Claims 60 and 61 are distinguishable over the combination of Dickson and Lockwood asserted by the Examiner. Wagner discloses a wine rack and likewise fails to disclose support portions and apertures as recited in Claim 57, from which Claim 58, and thus Claims 60, and 61 depend. Moreover, while Dickson and Lockwood relate to merchandise displays formed of wires or rods welded or soldered together at various points (see, e.g., Dickson, Column 1, lines 47-52), Wagner relates to a wine rack formed of a housing including planar walls (Wagner, column 2, lines 25-30). Accordingly, Wagner is not analogous art to Dickson and Lockwood, and one of skill in the art would not look to Wagner for features to combine with Dickson or Lockwood. Accordingly, for at least these reasons, Claims 60 and 61 are distinguishable over the cited art.

Regarding the New Claims

Applicant has added new claims 68 and 69 herein. Claims 68 and 69 recite subject matter disclosed but not claimed in U.S. Patent No. 6,044,983. Applicant therefore submits that no new matter has been added.

With respect to Claim 68, Applicant notes that the shelf structure is substantially as recited in Claim 5, with the further recitation that the support is "directly" connecting at least the

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front rod member and the framework. Applicant respectfully directs the Examiner to Column 2, lines 52-66 for discussion of the support.

With respect to Claim 69, Applicant notes that the shelf structure is substantially as recited in Claim 56, with the further recitation that the support is "directly" connecting at least the front member and the framework. Applicant notes that support in the specification for the recitations of Claim 56 has been previously discussed. Applicant respectfully directs the Examiner to Column 2, lines 52-66 for discussion of the support.

SUMMARY

For the reasons described above, Applicant respectfully submits that all of the pending claims are in condition for allowance. Applicant thus respectfully requests the Examiner withdraw the rejection of Claims 1-20, 22-24, 26-37, 39, 49-53, and 56-69 and pass these claims to allowance.

The undersigned has made a good faith effort to respond to all of the rejections and objections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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